

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

JUAN CARLOS RODRIGUE
ESPINOSA,

Petitioner,

3:14-CV-01745-TC

v.

FINDINGS AND
RECOMMENDATION

MARION FEATHER,

Respondent.

COFFIN, Magistrate Judge.

Petitioner filed a petition under 28 U.S.C. § 2241 challenging a prison disciplinary sanction on the grounds it was imposed by a disciplinary hearings officer who was not a Department of Corrections employee.

However, the record reflects that a disciplinary hearings officer at FCI Sheridan , employed by the BOP conducted a re-hearing of petitioner's incident report on January 28, 2015, and issued the same sanction.

Petitioner's claim should be denied as moot. See, Topete v. Feather, 2014 WL 7237677 at *3 (D. Oregon, December 15, 2014) (dismissed petition as moot when BOP DHO provided a re-hearing from contract DHO decision); Bolanos v. Renteria v. Benov, 2014 WL 5817532, *2 (E.D. Cal., Nov. 7, 2014) (finding and recommendation that petition be dismissed as moot because disciplinary re-hearing was conducted by a BOP DHO).

Petitioner's petition should be denied. The Clerk of the Court should be directed to enter a judgment dismissing this proceeding.

This recommendation is not an order that is immediately appealable to the Ninth Circuit Court of Appeals. Any notice of appeal pursuant to Rule 4(a)(1), Federal Rules of Appellate Procedure, should not be filed until entry of the district court's judgment or appealable order. The parties shall have fourteen (14) days from the date of service of a copy of this recommendation within which to file specific written objections with the court. Thereafter, the parties have fourteen (14) days within which to file a response to the objections. Failure to timely file objections to any factual determinations of the Magistrate Judge will be considered a waiver of a party's right to de novo consideration of the factual issues and will constitute a waiver of a party's right to appellate review of the findings of fact in an order or

judgment entered pursuant to the Magistrate Judge's recommendation.

Certificate of Appealability

Should petitioner appeal, a certificate of appealability should be denied as petitioner has not made a substantial showing of the denial of a constitutional right. See, 28 U.S.C. § 2253(c)(2).

DATED this 15 day of April, 2015.



Thomas M. Coffin
United States Magistrate Judge